

Supplemental Memorandum of Decision: 02-20190026R
Income Tax
For the Tax Years Ending March 31, 2009 and March 31, 2010

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Memorandum of Decision.

HOLDING

Business provided sufficient documentation to establish that it filed its amended returns claiming refund before the statute of limitations expired. Therefore, the claim for refund which was not processed via the concurrent audit was later incorrectly denied and the refund will be processed as claimed.

ISSUE

I. Income Tax—Statute of Limitations.

Authority: IC § 6-8.1-9-1; IC § 6-8.1-9-2; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of a claimed refund of income tax.

STATEMENT OF FACTS

Taxpayer is a business with operations in Indiana. In the course of conducting an audit for the tax years ending on March 31, 2009 and March 31, 2010 (the "Tax Years"), the Indiana Department of Revenue ("Department") was informed that Taxpayer had unclaimed credits for the Tax Years and was prepared to file amended returns to claim the resulting refund. The Department informed Taxpayer that it would incorporate those credits into its audit and that there was no need to file amended returns. Several years later, Taxpayer determined that the credits in question were never applied to its account and filed the amended returns to claim the refunds. The Department denied the claim, stating that it had been filed past the statute of limitations. Taxpayer filed a protest of the denial but did not attend the originally scheduled hearing. The original protest was administratively closed. Taxpayer requested and was granted a rehearing. That rehearing was conducted and an administrative hearing was held. This Supplemental Memorandum of Decision results. Further facts will be supplied as required.

I. Income Tax—Statute of Limitations.

Taxpayer protests the denial of its claim for refund regarding credits it states were available during the Tax Years. The Department denied the claim on the basis that the claim was filed past the statute of limitations. Taxpayer states that it had requested the refund during an ongoing audit several years prior, which was then within the statute of limitations. In the course of the protest process, Taxpayer provided documentation which establishes that it requested the credits and that the Department acknowledged the request within the statute of limitations and actually agreed to the credits.

As an initial point, the Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the initial refund determination, shall be entitled to deference.

Next, IC § 6-8.1-9-1(a) provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f) and (g), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

(1) The due date of the return.

(2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

During an ongoing audit covering the Tax Years, Taxpayer informed the Department that it had the credits available and that it had amended returns available to send in to claim the credits for the Tax Years. The Department informed Taxpayer that it did not need to submit the amended returns since the audit could address the matter. Taxpayer provided written verification of the Department's statement that the audit would incorporate the credits into its audit calculations and that there was no need to file the amended returns with the Department's central office.

In that audit, completed on November 17, 2011, the Department explained that Taxpayer had provided verification of the amount of credits available and that the credits would be taken into account in the course of the audit. The audit listed the amount of refund available to Taxpayer. The amount of refund listed in the audit report matches the amount of refund which Taxpayer claimed when it eventually filed the amended returns and continues to claim in this protest.

After Taxpayer filed the amended returns it had prepared in 2011, the Department denied the claimed refunds on the basis that the returns were filed past the statute of limitations provided under IC § 6-8.1-9-1(a). Taxpayer protested that it had attempted to file the amended returns but was instructed by the Department not to do so.

In the course of the protest process, Taxpayer provided documentation establishing that the Department did in fact instruct Taxpayer not to file the amended returns with the Department's central office on the basis that the refunds would be addressed in the course of the ongoing audit. A review of the audit report confirms that the Department did discuss, approve, and calculate the amounts at issue. Those amounts equaled the amounts Taxpayer had included on the amended returns which it was instructed not to submit in 2011.

A review of the Department's records shows that the credits at issue were never applied. Thus, the Department had agreed to the refunds at issue but never refunded or otherwise applied those amounts. Since Taxpayer has provided documentation establishing that it timely informed the Department of the claims and the amended returns, and since the Department's records show that it instructed Taxpayer not to file the amended returns with the Department's central office, and since the claims were agreed to by the Department via the audit but never processed, Taxpayer did meet the statute of limitations found under IC § 6-8.1-9-1(a). Due to this highly unusual string of verified events, the Department will now process and issue the refund as claimed. Also, since the audit was completed on November 17, 2011, that date will be used as the refund claim submission date for calculating interest under IC § 6-8.1-9-2(d).

FINDING

Taxpayer's protest is sustained.

September 1, 2020

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